

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

07880007aa

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR

Application Number

10/786,166

Filed

February 26, 2004

on _____

First Named Inventor

David Dise

Signature _____

Art Unit

3764

Examiner

Richman

Typed or printed
name _____

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.☐ assignee of record of the entire interest.See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)☒ attorney or agent of record.Registration number 32,635☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____



Signature

Michael E. Whitham

Typed or printed name

703-787-9400

Telephone number

August 21, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Disce

Confirmation No. 9136

Serial No. 10/786,166

Group Art Unit: No. 3764

Filed February 26, 2004

Examiner Richman

For SWING TRAINER

Mail Stop AF

Commissioner for Patents

PO Box 1450

Alexandria, Virginia 22313-1450

ATTACHMENT TO PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

This Pre-Appeal Brief Request for Review is being concurrently filed with a Notice of Appeal and a petition for a three month extension of time to respond to the office action mailed February 21, 2007. The Commissioner is authorized to charge all fees required for the petition for extension of time and notice of appeal to attorney's deposit account 50-2041 (Whitham, Curtis, Christofferson & Cook

The Invention

The invention is directed to an athletic training device which allows for strength conditioning using handles (e.g., golf, tennis, baseball, etc.) or balls (e.g., footballs, bowling balls, etc.) in a way which allows the user to perform the same movements he or she would when playing the sport or game of interest. An important feature of the invention is that the handle or ball is freely rotatable about a longitudinal axis passing through the handle or ball and is freely shiftable, movable or turnable. With reference to Figures 1 and 2a-c of the application, there is shown an exemplary embodiment where a golf handle is connectable to a weight stack. While using the golf handle, the handle is permitted to turn in the users hands about its lateral axis. In addition, in the golf swing the handle is moved from a hanging position to a position above the head on one side of the person's body, and then through the hanging position to an ending position above head on the other side of the person's body. In the practice of the invention, this is

permitted by having a pulley that is slidable on a cord which is connected to the top and bottom of the handle. Thus, as the handle is raised by the user, the pulley slides on the cord, and the handle is permitted to both turn about its longitudinal axis and move upward from its hanging position to its elevated horizontal position. While this movement is being executed, resistance is provided by a weight stack or other device which is connected to the pulley. In this way, the person has resistance applied to the very same muscles that are used when executing the golf swing. Similar procedures are preformed with tennis racket handles, baseball bat handles etc.

In addition, with reference to Figure 7, it can be seen that in connection with a football embodiment, the cord 12 is connected at two points on the tail of the football. This is because the football is moved upward, is turned, and is moved forward prior to release. The two point connection with the sliding pulley, where the pulley is connected to a weight stack or other resistance device permits these movements to be freely executed while resistance is applied to the very same muscles required for throwing a football.

Errors and Omissions

The Examiner has cited two references, neither of which are connected to or connectable to weight stack or other resistance device. Neither reference satisfies any of the claims in the application, and both references together would not make any of the claims obvious.

With reference to U.S. Patent Publication 2004/0110607 to Crespo, it can be seen that a punching bag is disclosed which permits a trainer to move the punching bag up and down. This is easily seen when looking at the trainer's hand and the bag position in Figure 2, and the trainer's hand and the bag position in Figure 3.

Notably, at no time is any resistance training provided by Crespo. That is, the user simply hits the bag, and adjusts to the position of the bag based on how the trainer moves the bag. Crespo thus is not directed to a handle or ball for use with a weight stack or resistance machine or device (see claims 1 and 16). The Examiner suggests that Crespo shows a pulley that is connectable to a weight stack or resistance machine or device; however, Crespo shows no such thing.

Crespo shows two pulleys firmly anchored above and below the bag. The position of the pulleys allows the bag to be moved up and down. Connecting the pulleys to a weight stack would completely change what is shown in Crespo.

Furthermore, the Examiner states "see fig. 1, pulley is movable on 10, or could be removed and moved closer or further". This is simply wrong. The pulleys in Crespo MUST BE above and below the bag (see all of the figures in Crespo and the summary in paragraph [0008] which makes clear that the Crespo device is intended to allow a bag to be moved up and down while it is punched (punching causing lateral movements of the bag)). Thus, the Crespo device cannot be reconfigured as the Examiner has suggested without completely destroying the purpose of the Crespo machine.

The Blom reference is quite similar to Crespo, and is thus different from the claimed invention for much the same reasons. Blom contemplates being able to position a baseball at different batting heights (i.e., different distances above the ground). Blom uses a combination of inelastic lines (for positioning) and elastic lines (for stopping the forward progress of the ball after it is hit). Blom contemplates a device which allows the baseball to quickly return to a position where it can be batted again.

Like Crespo, Blom does not show or suggest anything related to resistance training. Rather, Blom merely shows a device which allows repetitive batting and not a device which strengthens the muscles used for batting. There is no pulley in Blom which is connectable to a weight stack or other resistance machine or device.

The Examiner has relied on Blom as showing a handle that is freely rotatable about a longitudinal axis (see page 2 of the Feb. 21, 2007 office action). This is wrong. Blom only shows a ball connected to elastic lines and inelastic lines. Blom does not show or suggest a handle which is freely rotatable about a longitudinal axis passing through the handle where the handle is freely shiftable, movable or turnable.

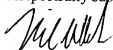
In addition to the fundamental differences between the claimed invention and the Crespo and Blom references, it is noted that claim 1 requires that the cord passing through said pulley during shifting, moving or turning. With respect to Crespo, it can be seen from Figures 2 and 3 that this simply does not occur. Rather, the instructor maintains the bag at one height to allow the user to strike the

bag at that height. At a later time the instructor moves the bag to a different height. The cord does not move through the pulleys in Crespo due the user's striking the bag (i.e., the user shifting, moving or turning). Rather, the cord only is moved under the requirements of the instructor. With respect to Blom, the ball returns to exactly the same position it was before it was struck. Thus, the bat (in the user's hands in Blom) does not cause the cord to move through the pulley during shifting, moving or turning of the bat.

Simply put, the Crespo and Blom references are not related to strength training of muscles used when performing sports specific movements. Rather, Crespo and Blom are target oriented devices which allow up and down movement of a bag or ball. Crespo and Blom do not show or suggest any component or pulley that would be connectable to a weight stack, resistance machine or other device. Crespo and Blom do not show a handle or ball which is permitted to turn and move in a sports specific fashion, while a cord connected at two points to the handle or ball passes through a pulley which is connected to a weight stack or other resistance device.

In view of the above, it is requested that the position of the Examiner be reviewed, that the rejections be withdrawn, and that the application be passed to issue.

Respectfully submitted,



Michael E. Whitham
Reg. No. 32,635

Whitham, Curtis, Christofferson & Cook, P.C.
11491 Sunset Hills Road, Suite 340
Reston, VA 20190
Tel. (703) 787-9400
Fax. (703) 787-7557

Customer No.: 30743